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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company
06-10725 – Lead Case

USA Capital Realty Advisors, LLC
06-10726

USA Capital Diversified Trust Deed Fund, LLC
06-10728

USA Capital First Trust Deed Fund, LLC
06-10728

USA Securities, LLC
06-10729

Debtors.

Jointly Administered

Chapter 11 Cases

Judge Linda B. Riegler Presiding

**Response to Motion for Emergency
Interim and Permanent Orders
Authorizing the Debtors to Obtain
Post-Petition Financing**

Date: June 21, 2006

Time: 9:30 a.m.

Affecting:

☒ All Cases

or Only:

☐ USA Commercial Mortgage Company

☐ USA Capital Realty Advisors, LLC

☐ USA Capital Diversified Trust Deed Fund, LLC

☐ USA Capital First Trust Deed Fund, LLC

The Official Committee of Unsecured Creditors of USA Commercial Mortgage Company (the "Committee") believes that there is merit in Debtors' request for post-petition financing pursuant to 11 U.S.C. § 364, and supports Debtors' ongoing exercise of business judgment through Mr. Allison, but the Committee respectfully submits that further information needs to be provided before the hearing on June 21. We detail our major concerns for the convenience of the Debtors and the Court.

1 1. *How Much Is Needed and When?*

2 Debtors' Amended 13-Week Cash Forecast filed on June 9, 2006 [DE 557]
3 indicates that during the forecast period through August 27, 2006, the lowest point in the
4 "Total Cash DIP Operating Account at End of Period" is \$11.8 million this week. Debtors
5 indicate they need up to \$3 million in availability under the proposed DIP loan by July 25,
6 2006. The forecast does not explain when funds are needed. If there is an amended
7 forecast, the Committee would like to see it.

8 The Committee does not dispute that a DIP loan for the purposes of evening out
9 cash flow to pay expenses of administration, including loan enforcement actions, makes
10 sense. Nor does the Committee disagree that the relatively small additional advance such
11 as the \$125,000 on the Boise/Gowan project to complete funding and satisfy a potential
12 mechanics' lien claim makes sense. The Committee simply notes that Debtors have not
13 indicated that they need the DIP, when they need the funds, and what they intend to draw
14 on an interim basis.

15 Conversely, the Committee would be prepared to approve the DIP on an interim
16 basis, with the requested \$3 million treated as an operating reserve, subject to the
17 Committee's prior consent if the Debtors propose to draw down on the DIP Loan.

18 2. *What Is The Carve-Out For Certain Professional Fees And U.S. Trustee*
19 *Fees Referred To In Both The Motion And The Term Sheet?*

20 We understand that this amount is subject to further negotiation and look forward to
21 seeing the details and hopefully approving them.

22 3. *Has The DIP Lender Approved The Rolling 13-Week Cash Flow Budget (Or*
23 *Is There Another)?*

24 If the DIP Lender has agreed to fund a particular rolling 13-week cash flow budget,
25 then the Court and parties have some assurance that those aspects of Debtors'
26 administration will be funded on an interim basis.

1 4. *When Will The Parties Have An Opportunity To Review "Such Loan And*
2 *Security Agreements, Notes, Mortgages, Deeds Of Trust, Instruments, Documents,*
3 *Certificates, Opinions, Environmental Indemnities, Fraud Guaranties, Third Party*
4 *Reports And Assurances As Are Reasonable And Customary For Similar Loans, And As*
5 *Lender May Reasonably Require In Connection With The Closing"?*

6 These documents govern the loan, may create events of default that could create an
7 immediate obligation to repay the DIP Loan, and need to be available for review by
8 Debtors, the Committees and the United States Trustee before the loan closes on an
9 interim or permanent basis.

10 5. *How Will The Loan Be Repaid Among The Debtors?*

11 The motion suggests that the assets of USA Capital Diversified Trust Deed Fund,
12 LLC and USA Capital First Trust Deed Fund, LLC (together, the "Funds") and those of
13 USA Commercial Mortgage Company are primary collateral for the DIP Lender, subject
14 to agreements among the Debtors as to contribution or subrogation concerning loan
15 repayment, which agreements have not been outlined, much less disclosed. This issue
16 may be resolved before the final hearing.

17 6. *Are the Minimum Terms of the Shortfall Loans Market Terms?*

18 The Committee does not oppose the DIP Lender's opportunity to fund Shortfall
19 Loans on a right of first offer basis, upon prior notice and opportunity for objection on the
20 terms of any such proposed loan.

21 The right of first offer granted to the DIP Lender on Shortfall Loans contains a
22 floor of origination fees of 1.50% of the face amount of each such loan, and interest rates
23 of no more than LIBOR plus 7.50%, with expense reimbursement and ordinary terms.
24 The only concession by Debtors appears to be the origination fee and Debtors should
25 demonstrate that this is a market-based term. The interest rate cap from the DIP Lender
26

1 appears to be a benefit for Debtors. In any event, these loans would not occur without
2 prior notice and consideration by interested parties and the Court.

3 7. *The DIP Lender Should Be Entitled To A Fee For Financing Debtors' Exit*
4 *From Bankruptcy Only If Debtors Request And Accept A Commitment For Such Exit*
5 *Financing.*

6 This may be implicit, but should be explicit in the loan documents.

7 8. *Can the Closing Date Be Extended?*

8 The outside date for Closing is June 30, 2006, but the loan can not be finally
9 approved under Bankr. R. 4001(c) until a final hearing that requires not less than 15 days
10 notice. A June 30, 2006 closing date seems impossible to meet.

11 9. *What Is The Overadvance Facility Referred To In The Motion And The Term*
12 *Sheet?*

13 There are references to an "Overadvance Facility" in the documents, which Debtors
14 indicate is simply a typographical error.

15 Conclusion

16 The Committee wants to support Debtors' collection activities and its business
17 judgment, and looks forward to resolving these concerns with Debtors before the hearing.

18 Dated June 19, 2006.

19 **LEWIS AND ROCA LLP**

20
21 By /s/ RC (#006593)

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22 Rob Charles, NV 6593

23 *Attorneys for Official Committee of Unsecured*
24 *Creditors*
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